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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.103 OF 2004

Somnath Sitaram Gave & Anr. ... Appellants

V/s.

The State of Maharashtra ... Respondent

Mr.S.A. Dhamale for Appellants
Mrs.S.D. Shinde, APP, for Respondent

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **NOVEMBER 20, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. This appeal is directed against the judgment and order of the Sessions Court at Nashik in Sessions Case No.92 of 2003. By this order, the Sessions Court has convicted both the accused of the offences punishable under section 302 and sentenced each of them accordingly.

2. Briefly stated, the case of the prosecution is that the victim Budha was working as a labourer and staying with his wife Bhimabai and his niece Meena. On 11.3.2003, a religious programme was being conducted at the Mhasoba temple which was very close to their house. The programme came to a close just after midnight on 12.3.2003. Budha was standing near the temple with some

others. According to the prosecution, some dogs were barking near the victim. He drove them away by uttering a particular exclamation. The accused who came to the spot at that time took umbrage as they thought that the victim had directed the exclamation at them. Accused No.2 caught hold of the victim while accused No.1 stabbed him in the chest. Budha collapsed on the spot. According to the prosecution, accused No.1 then inflicted injuries on himself with the knife which was still in his possession. The accused then fled from the scene. Bhimabai, the wife of the victim took him to the police station where they were directed to the hospital. Budha succumbed to the injuries. Bhimabai then lodged a report with the police. A postmortem examination was conducted and the medical officer opined that the death had occurred due to internal haemorrhage on account of the stab injury on the victim’s chest. The same medical officer examined the accused No.1 and concluded that he suffered from a self inflicted injury on his body. The police then investigated the crime. They arrested the accused and recovered the weapon of assault at the instance of accused No.1. The blood stained clothes of the accused and the weapon were seized. The accused were then charged under section 302 r/w 34 of the Indian Penal Code. The trial was committed to Sessions. The Sessions Court convicted them and it is this judgment

which is impugned in the present appeal.

3. The prosecution has placed reliance on the testimony of 8 witnesses. 3 of whom are eye witnesses. PW2 is the niece of the victim. She has described the incident which occurred after midnight on 12.3.2003. She has seen the accused No.2 catching hold of the victim by his hands and accused No.1 stabbing him fatally in the chest with a knife. According to this witness, both the accused fled immediately from the scene of offence. However, she does not mention anything about accused No.1 inflicting an injury on himself.

4. The next witness examined by the prosecution is Bhimabai, the wife of the victim. She has spoken about the enmity between the victim and the accused who are his brother’s sons. She has also seen accused No.1 assaulting the victim on his chest with a knife and accused No.2 catching the victim by his hands to ensure that he did not escape. This witness, however, has stated that accused No.1 inflicted injuries on himself on his abdomen with the same knife and then ran towards police outpost. She has stated that although she was in the house after the function at the temple, she came out

of the house when she heard the accused and her husband quarrelling and saw the manner in which the victim was injured. This witness has admitted the victim in the hospital after being directed there by the police. In the cross-examination it was suggested to her that the victim was a drunkard and that she had lodged a false complaint against the accused because of the rivalry between them and her husband. However, both the suggestions have been denied by PW3. A perusal of her evidence and the First Information Report lodged by her indicates that there are no contradictions or discrepancies or material omissions in her deposition. Her evidence is, therefore, credible.

5. PW4 is the cousin of the accused and the victim was his father. This witness has also seen the incident. He has stated that the accused who were near the temple thought that Budha, while chasing away the dogs had uttered some words to insult them. This witness has corroborated the testimony of both PW2 and PW3 with regard to the manner in which the assault took place on the victim. In the cross-examination, he has named the persons who were present when the assault took place, two of whom are examined by the prosecution as PW2 and PW3.

6. PW5 is a panch witness who has turned hostile and therefore, his evidence need not be considered.

7. PW6 is a Police Sub Inspector who conducted the spot panchanama and has proved the same. This witness sent accused No.1 for medical aid when he reached the police outpost in an injured state. PW7 is the Investigating Officer. He has proved the arrest of the accused and the seizure of the blood stained clothes as well as the recovery of knife at the instance of accused No.1. He has proved the seizure panchanama and the fact that the blade of the knife and its handle was blood stained.

8. The last witness examined on behalf of the prosecution is the medical officer, Civil Hospital, Nashik. He has conducted the postmortem examination on the victim. He has opined that the stab injury which was inflicted caused a haemorrhagic shock leading to the victim’s death. Corresponding cuts were found on the clothes of the deceased. This Doctor has also examined accused No.1 and has stated that although an injury was sustained by accused No.1, none of his internal organs were damaged. However, according to this witness, the injury sustained by accused No.1 was self inflicted whereas the victim had suffered homicidal injuries.

9. Significantly, PW2 has stated that the victim was assaulted on the right side of the chest. Thus, the ocular testimony on record is corroborated by the medical evidence on record. The report of the Chemical Analyser indicates that the knife was blood stained. The knife was recovered at the instance of accused No.1. In such circumstances, we have no doubt that the accused have committed the offence for which they are charged. Accused No.2 is equally guilty as it was because he held back the hands of the victim that accused No.1 was able to stab him in the chest.

10. With the assistance of the learned Advocate for the accused and the learned Assistant Public Prosecutor, we have scrutinised the entire evidence on record and reappreciated the same. In our opinion, the accused cannot be convicted under section 302 of the Indian Penal Code having regard to the fact that accused No.1 had dealt only one blow with the knife on the victim. The evidence on record does not disclose that the accused had any intention to kill the victim. In such circumstances, we set aside the conviction and sentence under section 302 of the Indian Penal Code and instead convict the accused for the offence punishable under section 304 Part II of the Indian Penal Code. The

accused are sentenced to suffer rigorous imprisonment for a period of 6 years.

11. Appeal partly allowed accordingly.